

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOARD OF TRUSTEES OF THE SHEET
METAL WORKERS' LOCAL UNION
NO. 80 INSURANCE TRUST FUND,

Plaintiff,

v.

Civil Case No. 2:13-cv-10415
Honorable Patrick J. Duggan

BLUE CROSS AND BLUE SHIELD
OF MICHIGAN,

Defendant.

**OPINION AND ORDER DENYING PLAINTIFF'S MOTION TO LIFT
STAY OF PROCEEDINGS AND/OR FOR RECONSIDERATION**

On August 12, 2013, this Court issued an Opinion and Order granting a motion filed by Defendant Blue Cross and Blue Shield of Michigan ("BCBSM") seeking to stay this litigation pending the Sixth Circuit Court of Appeals' decision in a related case: *Hi-Lex Controls, Inc. v. Blue Cross & Blue Shield of Michigan*, No. 11-12557, 2013 WL 2285453 (E.D. Mich. May 23, 2013), *appeal docketed*, Nos. 13-1773 and 13-1859 (6th Cir. June 25, 2013). Presently before the Court is Plaintiff's "Motion to Lift Stay of Proceedings and/or for Reconsideration," filed pursuant to Eastern District of Michigan Local Rule 7.1(h) on August 26, 2013. In the light of Plaintiff's framing of its motion as seeking something in addition to

reconsideration, the Court issued a notice on September 24, 2013, informing the parties that it would allow BCBSM to file a response to the motion if it chose to do so. On October 8, 2013, BCBSM filed a response brief.

Rule 7 of the Local Rules for the Eastern District of Michigan advises that “[t]he court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication.” E.D. Mich. L.R. 7.1(h)(3). A motion for reconsideration will be granted only where the movant “demonstrate[s] a palpable defect by which the court and the parties . . . have been misled” and “show[s] that correcting the defect will result in a different disposition of the case.” *Id.* A defect is palpable when it is “obvious, clear, unmistakable, manifest, or plain.” *Chrysler Realty Co., LLC v. Design Forum Architects, Inc.*, 544 F. Supp. 2d 609, 618 (E.D. Mich. 2008).

Plaintiff fails to demonstrate a palpable defect with respect to the Court’s August 12 decision. Plaintiff contends that the Court did not expressly consider the factors relevant to determining whether a stay should be entered. The Court, however, did consider those factors even if it did not discuss them at length. Plaintiff further contends that the Sixth Circuit’s recent decision in *Pipefitters 636 Insurance Fund v. Blue Cross & Blue Shield of Michigan*, – F.3d –, 2013 WL 3746217 (6th Cir. July 18, 2013), governs the *Hi-Lex* appeal and the current action.

This is an argument, however, that Plaintiff raised in the initial motion to stay which this Court rejected.

Alternatively, Plaintiff asks the Court to allow this litigation to at least proceed with the discovery phase pending the *Hi-Lex* appeal. Plaintiff contends that the Honorable David M. Lawson recently issued a decision in a related case “recogniz[ing] the appropriateness of allowing discovery prior to the completion of the [*Hi-Lex*] appeal . . . , and directed the parties to submit a Discovery Plan for the court’s consideration.” (Pl.’s Br. in Supp. of Mot. at 6-7.) Judge Lawson did direct the parties to submit a discovery plan in the case before him: Minute Entry, *Dykema Excavators, Inc. v. Dykema Excavators, Inc. et al. v. Blue Cross & Blue Shield of Michigan*, No. 13-12151 (E.D. Mich. Aug. 1, 2013). However, this was several months *before* he granted BCBSM’s motion to stay the matter pending the *Hi-Lex* appeal and administratively closed the case. Order Granting Mot. for Stay, *Dykema Excavators, Inc.*, 13-12151 (E.D. Mich. Oct. 29, 2013) (ECF No. 15). This is consistent with what every judge has done in response to BCBSM’s motions to stay pending the *Hi-Lex* appeal in the more than twenty related cases filed in this District.

For the above reasons, the Court finds no palpable defect with respect to its August 12, 2013 decision and no reason to lift the stay to allow the parties to

engage in discovery.

Accordingly,

IT IS ORDERED, that Plaintiff's Motion to Lift Stay of Proceedings and/or for Reconsideration is **DENIED**.

Dated: October 31, 2013

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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